

Nuclear Automation Division of Esterline Electronics Corporation and Sara B. Eichelberger. Case 6-CA-15864-2

15 May 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

On 20 October 1983 Administrative Law Judge Peter E. Donnelly issued the attached decision. The Respondent filed exceptions and a supporting brief and brief in support of the administrative law judge's decision. The Respondent filed an answering brief to the General Counsel's cross-exception.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions² and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Nuclear Automation Division of Esterline Electronics Corporation, North Huntingdon, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² In adopting the judge's conclusion that the Respondent violated Sec. 8(a)(1) of the Act by discharging employee Eichelberger we note that the activities for which she was discharged constituted concerted activity under the standards of *Myers Industries*, 268 NLRB 493 (1984).

Member Zimmerman notes that the Respondent is not contesting the concerted nature of Eichelberger's activity and therefore finds the reliance on *Myers Industries*, in which he dissented, to be unnecessary. The Respondent defended the discharge of Eichelberger by claiming that she voluntarily quit, or would have been discharged for committing numerous work errors. Consequently, *Myers Industries* has no bearing on the issues raised here.

DECISION

STATEMENT OF THE CASE

PETER E. DONNELLY, Administrative Law Judge. The charge in the above-captioned case was filed by Sara B. Eichelberger, an individual, on November 15, 1982. A complaint thereon was issued on December 22, 1982, alleging that Nuclear Automation Division of Esterline

Electronics Corporation, herein Respondent, violated Section 8(a)(1) of the Act by informing employees that they were discharged for instigating and participating in concerted complaints by employees concerning wages, hours, and working conditions and by discharging Eichelberger for that reason. An answer was timely filed by Respondent which denied the allegations. Pursuant to notice, a hearing was held before me at Pittsburgh, Pennsylvania, on April 21, 1983. Briefs have been timely filed by the General Counsel and Respondent and have been duly considered.

FINDINGS OF FACT

I. JURISDICTION

Respondent is a Pennsylvania corporation engaged in the manufacture and nonretail sale of nuclear components and related products. During the 12-month period ending November 30, 1982, a representative period, Respondent in the course and conduct of its business operations sold and shipped products, goods, and materials valued in excess of \$50,000 directly to points outside the Commonwealth of Pennsylvania. The complaint alleges, the answer admits, and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts¹

Eichelberger was employed by Respondent from November 1974 through August 4, 1982. The last year of her employment was in the quality control department as a data package compiler. Data package compilers review and collect documents detailing contract specifications and production performance. Prior to May 1982,² an employee named Janice Beehana reviewed all of Eichelberger's work. After that, Eichelberger spent approximately 50 percent of her time putting together packages reviewed by Debbie Lander, the group leader, and the rest of her time on a package known as Pack 62 which was reviewed by Bill Swope, the immediate supervisor of the quality control department.

In addition to Eichelberger and Debbie Lander, there were four other quality control department employees under Swope's supervision. They were Amy Yurcisin, Lorri Zorzi, Patricia Barrick, and Robert McCarty. From time to time throughout the year, the women employees would express among themselves dissatisfaction

¹ There is conflicting testimony regarding the allegations of the complaint. In resolving these conflicts, I have taken into consideration the apparent interests of the witnesses; the inherent probabilities in light of other events; corroboration or lack of it; and consistencies or inconsistencies within the testimony of each witness and between the testimony of each and that of other witnesses with similar apparent interests. In evaluating the testimony of each witness, I rely specifically on his or her demeanor and make my findings accordingly. In addition to consideration of demeanor, I have taken into account the above-noted credibility considerations and any failure to detail each of these is not to be deemed a failure on my part to have fully considered them. *Bishop & Malco, Inc.*, 159 NLRB 1159, 1161 (1966).

² All dates hereinafter will refer to 1982 unless otherwise noted.

with their wages, which they understood to be less than half of McCarty's and their working conditions, including cramped offices, telephone restrictions, and other matters.

In the last week of July, Eichelberger typed up a letter with a list of employee demands regarding the above-mentioned complaints and including a demand for the same opportunities for training for advancement that were available to male employees of Respondent. The list included the statement that the employees would all "turn in their termination notices as of a certain date" if management did not respond within 1 or 2 weeks. Eichelberger gave the list to Lander,³ who expressed pleasure with it and took it around to the other women. Later that day, Lander returned the letter to Eichelberger, saying that all the women had read it and desired to sign except for one woman who would not sign. Eichelberger then told Lander, "If you can't all stick together, you might as well forget it." She then ripped up the letter and threw it out.

On August 2, however, the women employees decided to take some action and speak to H. Ray Rambler, the vice president of operations, about their concerns. They also decided that they would first approach their supervisor, Swope, to tell him that they wished to speak to Rambler.

Around 10 a.m. on August 3, the five women employees for the quality control department went to Swope's office. No one spoke at first and Eichelberger finally opened the conversation by telling Swope that the women wanted to speak to Rambler about their working conditions and wages. At that, everyone began talking at once. Barrick, the least senior employee, told Swope that the wage complaint was entirely justified because she knew of another company that paid much more for less technical work. Swope responded that the particular company was much larger than Respondent. Finally, Swope agreed to arrange a meeting with Rambler. Later that day, Swope informed Eichelberger that Rambler would see the entire group the next morning.

When the next morning came, however, the only person called to Rambler's office was Debbie Lander, the group leader. After Lander left Rambler's office, she told Barrick, Zorzi, and Yurcisin⁴ that she had told Rambler about their dissatisfaction with the wages and working conditions. At that point, Barrick was called into Swope's office. Swope told Barrick he had been instructed by Rambler to fire her because she had been labeled as the instigator in the women's demands. Barrick denied it and told Swope about the letter Eichelberger had typed containing their resignations. Barrick suggested to Swope that Lander had blamed Barrick to save her own job, to which Swope's response was a noncommittal, "Possibly." Swope told Barrick not to talk to anyone and to leave the building. When Barrick returned to her office, she saw Eichelberger, Bob McCarty, and George Ripple, the former quality control supervisor. Barrick

was crying and told Eichelberger, "I hope you're happy; you got me fired."⁵

After Barrick left, Eichelberger became very upset and tried to contact Swope to tell him she was going home. She was unable to locate Swope, so she asked Ripple to relay the message that she was ill, was going home, and would return the next day. Ripple agreed to relay the message.⁶ The Respondent's company rules require only that the supervisor be notified and Eichelberger testified that it was common practice to leave messages for supervisors regarding sick time. Rambler testified that Swope reported to him that Eichelberger had left "ranting and raving," saying that she had had it with the Company. He also testified that another supervisor⁷ said he saw Eichelberger leave crying and that it was his impression that she quit. Swope testified that he had been told by Bob McCarty⁸ what had taken place and Swope assumed Eichelberger had quit because she left in an emotional state. These hearsay declarations are the only information Respondent offered regarding Eichelberger's departure from work. After receiving these reports, and without further inquiry, Swope sent a memorandum to the payroll department announcing that Eichelberger's employment had been terminated as of that date.

On the following day, August 5, Eichelberger called in early in the morning to say she was still ill and would not be in until the next day. When Swope received the message he reported it to Rambler. Rambler then instructed Swope to inform Eichelberger that the Company regarded her as terminated and would not accept her back. When Swope called Eichelberger, he told her he had been instructed to terminate her. Eichelberger asked why and was told that the group of female employees were using Eichelberger's lack of promotion as evidence that Respondent's discriminated against women and that they felt, consequently, that they had no future with Respondent. Swope also said he had tried to get Eichelberger a transfer but that Rambler had refused, saying that Eichelberger's presence was a disturbance to the other women. Finally, Swope asked Eichelberger if she had typed the resignation letter for the women and Eichelberger admitted that she had.⁹

After that phone conversation, Eichelberger called in and asked Bob Demagone, the company controller, to clean out her desk for her. On the next day, August 6, Eichelberger went in to sign off on her security papers and found her belongings in the hall outside the lobby. Demagone gave Eichelberger her security papers and told her to read them carefully. In the space marked

³ Lander did not testify at the hearing.

⁴ Zorzi and Yurcisin did not testify.

⁵ Eichelberger testified that Barrick said, "Thank Debbie for me." Barrick's own explanation of what she said clarified that she included the other women in the term "you." That being the case, I find it likely she did mention Lander's name and there is no serious contradiction in the testimony of Barrick and Eichelberger. Also, Barrick's account of her interview with Swope was uncontradicted.

⁶ This testimony by Eichelberger is uncontradicted. Ripple did not testify.

⁷ The supervisor was Hasnauner who did not testify.

⁸ McCarty did not testify.

⁹ I credit Eichelberger's account of this phone conversation over Swope's, who admitted he could not remember whether they discussed the letter and then decided he had only found out about the letter in some later unspecified discussion.

"reason for termination," the words "voluntary quit" were typed. Eichelberger then told Demagone that she would not sign because she had not quit. In response, Demagone took the papers to Wendall Hager, the company president, and brought back another set that had the words "unsatisfactory performance" instead of "voluntary quit." Eichelberger signed this set because she felt compelled by security regulations although she noted above her signature that she did not agree with that explanation of her termination.

B. Discussion

The General Counsel contends that Respondent discharged Eichelberger because she participated in discussions among the employees about unsatisfactory working conditions, she drafted and circulated a letter of employee demands to improve conditions and she appeared to lead the assembled women data package compilers in a meeting in which they expressed dissatisfaction with wages and working conditions, and asked to meet with a management representative. Respondent claims, however, that Eichelberger was an unsatisfactory employee who quit. I find the General Counsel's position to be a more accurate description of what occurred.

The women employees had been discussing their unsatisfactory wages and working conditions among themselves for several months prior to and during the summer. At the end of July, Eichelberger reduced their complaints to a letter which demanded that Respondent address the problems or the women would resign. She then circulated the letter among the women but it was not unanimously adopted. In addition to this activity, of which Respondent was aware by virtue of Barrick's conversation with Swope during her discharge interview, Eichelberger had already appeared to Respondent as a leader among the women employees. In the August 3 meeting with Swope, Eichelberger spoke first and expressed on behalf of the assembled women a dissatisfaction with wages and working conditions. Respondent was well aware of this protected concerted activity because not only was Supervisor Swope present, but he reported the incident to Vice President Rambler in the course of arranging a meeting for the group to discuss the problems. On the very next day, and within hours of hearing about a "resignation" letter typed by Eichelberger for the women, Respondent sent notice to the payroll department terminating Eichelberger's employment.

Respondent's claim that Eichelberger voluntarily quit her job does not stand close examination. First of all, neither Rambler nor Swope received a message from Eichelberger that she had quit. The only information they received was that Eichelberger had left emotionally upset and such information is obviously hearsay since neither of the two people who made these reports testified. Moreover, Eichelberger's testimony that she notified a former supervisor of her leaving because of illness was uncontradicted.¹⁰ Nonetheless, Swope testified that

Eichelberger's "emotional" state was what prompted him to assume Eichelberger had quit and gave no other reasons. Then, without making any attempt to verify the situation with Eichelberger, termination papers were filled out to be sent to the payroll department. Based on the probative evidence in this record, I find it inconceivable that Respondent had any reasonable basis for believing that Eichelberger had quit her employment. Thus, I find that Respondent effectively discharged Eichelberger by insisting she had quit. See *J. P. Stevens & Co.*, 245 NLRB 198, 212-213 (1979).

Having concluded that Eichelberger did not quit, but was discharged, I further conclude that her discharge was discriminatory. In this regard, I note the Respondent's failure to investigate the situation with Eichelberger or to discuss it with her and the speed with which Respondent pronounced Eichelberger's termination. These reveal a strong desire to remove her from the work force which had not surfaced before her protected activity. Respondent freely admits that there was no intention to dismiss Eichelberger prior to the events on August 4. Further, the quality control department was already short-staffed and overworked.

Respondent has argued that Eichelberger was a "problem" employee and offers as support evidence that the project, Pack 62, on which Eichelberger worked was returned with errors. This argument is specious. First of all, Rambler testified that mistakes on the data packages would be the fault of both the compiler and the reviewer. Rambler also testified there had been problems with Pack 62 since April or May, which coincidentally was when Swope began reviewing Pack 62, but Rambler offered from a series of weekly memoranda only two memoranda which indicated any problems with Pack 62 to support his testimony that it was a repeated problem. Furthermore, he never discussed any problems with Pack 62 with Eichelberger. Significantly, as recently as July, Swope forwarded a request from Eichelberger for a raise and noted that she had been doing a "fine productive job." Finally, if indeed Eichelberger was a "problem" employee, why had there been no thought of firing Eichelberger previously? Although Respondent offered some evidence that it occasionally terminated employees for unsatisfactory performance, virtually no evidence was adduced to allow comparisons between the unsatisfactoriness of the other employees and Eichelberger's alleged unsatisfactoriness.¹¹

Under these circumstances, I conclude that Respondent's decision to terminate Eichelberger was prompted by the accusation by Barrick that Eichelberger was the instigator of the women's concerted effort to improve their wages and working conditions. This accusation, closely following the meeting in which Eichelberger appeared as spokeswoman for the disgruntled employees, could only have convinced Respondent that Eichel-

¹⁰ This former supervisor was not called by Respondent even though he is presumably still employed by Respondent.

¹¹ Respondent also argues that the Board's test for dual-motive discharges in *Wright Line*, 251 NLRB 1083 (1980), should apply if a discharge is found. For the reasons noted above, I find that this record discloses no legitimate motivating factor for Respondent's actions. As a result, no *Wright Line* analysis is necessary. *Limestone Apparel Corp.*, 255 NLRB 722 (1981).

berger was instigating concerted activity on the part of the women employees, and Swope's conversation with Eichelberger confirms this.

In sum, I find that Eichelberger was effectively discharged by Respondent as a direct result of her role in the August 3 meeting with Swope and her authorship of a letter on behalf of the women employees in her unit which engendered Respondent's view of her as an instigator in the concerted efforts of the employees to improve wages and working conditions. Because the above activities are activities protected by Section 7 of the Act, I find that Respondent's discharge of Eichelberger violates Section 8(a)(1) of the Act.

In addition, the coercive effect of Swope's statement to Barrick that she was being discharged because she encouraged the women in their complaints compels the finding that that statement violates Section 8(a)(1) of the Act. Similarly coercive is Swope's statement to Eichelberger that she was terminated because she led the women in expressing their dissatisfaction with their wages and working conditions and that remark also violates Section 8(a)(1) of the Act.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with Respondent's operations described in section I, above, have a close and intimate relationship to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. THE REMEDY

Having found that Respondent has engaged in, and is engaging in, unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. I have found that Respondent discharged Sara B. Eichelberger in violation of Section 8(a)(1) of the Act and I therefore recommend that Respondent make her whole for any loss of pay which she may have suffered as a result of the discrimination practiced against her.¹² The backpay provided herein with interest thereon shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977).¹³

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. By unlawfully discharging Sara B. Eichelberger, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
3. By interfering with, restraining, and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act, Respondent has engaged in, and is en-

gaging in, unfair labor practices prescribed by Section 8(a)(1) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁴

ORDER

The Respondent, Nuclear Automation Division of Esterline Electronics Corporation, North Huntingdon, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees in regard to their hire and tenure in order to discourage concerted employee action regarding terms and conditions of employment.

(b) Telling employees that they were discharged because of their protected concerted activity regarding their wages and working conditions.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which I find necessary to effectuate the policies of the Act.

(a) Offer Sara B. Eichelberger immediate and full reinstatement to her former job or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges previously enjoyed, and make her whole for any loss of pay she may have suffered in the manner set forth in the section entitled "The Remedy."

(b) Expunge from its files any reference to the discharge of Sara B. Eichelberger and notify her in writing that this has been done and that evidence of the unlawful discharge will not be used as a basis for future personnel action against her.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due herein.

(d) Post at its North Huntingdon, Pennsylvania facility copies of the attached notice marked "Appendix."¹⁵ Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by Respondent's authorized representative, shall be posted by it immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material.

¹² Since the issue as to the possible tolling of backpay pursuant to an offer of reinstatement was not fully litigated, I make no findings in that regard.

¹³ See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

¹⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹⁵ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT discharge or otherwise discriminate against our employees in regard to their hire or tenure in order to discourage concerted employee action regarding terms and conditions of employment.

WE WILL NOT tell our employees that they were discharged because of their protected concerted activity regarding their wages and working conditions.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Sara B. Eichelberger immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed and WE WILL make her whole for any loss of earnings and other benefits resulting from her discharge, less any net interim earnings, plus interest.

WE WILL expunge from our files any reference to the discharge of Sara B. Eichelberger and notify her in writing that this has been done and that evidence of the unlawful discharge will not be used as a basis for future personnel action against her.

NUCLEAR AUTOMATION DIVISION OF ES-
TERLINE ELECTRONICS CORPORATION